

(1931) 12 CAL CK 0015
In the Calcutta High Court

Basanta Kumar Choudhury and Another	APPELLANT
Vs	
Baikuntha Nath Chakravarty and Another	RESPONDENT

Date of Decision : 17-12-1931

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1932 Cal 555

Hon'ble Judges : M.C. Ghose, J;Guha, J

Bench : Full Bench

Judgement

Guha, J.—This appeal has arisen out of an order passed by the Subordinate Judge, First Court, Sylhet, disposing of certain objections to the execution of a decree, raised by judgment-debtors 1 and 3, the appellants in this Court, u/s 47, Civil P.C. It appears that an application was made on 17th February 1925, for execution of a decree passed on 29th February 1924, in favour of the decree-holder respondent, Rai Baikuntha Nath Chakravarti Bahadur. There were three judgment-debtors (1) Basanta Kumar Chowdhury (2) Biswanath Chowdhury and (3) Birendra Kumar Chowdhury, against whom execution of the decree was applied for. Of these judgment debtors, Basanta and Birendra are the appellants in the present appeal. The claim made in the application for execution of the decree to which reference has been made, was for recovery of the amount of Rs. 47,308-8-5 which included interest on the amount decreed in favour of the decree-holder, up to the date when the application for execution was made, that is, 17th February 1925. The prayer made by the decree-holder in the application for execution was to this effect: that the application for execution be duly numbered and the amount claimed be ordered to be realized by sale of the immovable properties under mortgage mentioned in the schedule. This application for execution was opposed by the judgment-debtors at various stages, and the objections raised to the execution proceedings were many and various. We are not however concerned with all the objections raised by the judgment-debtors from time to time to the application for execution of the decree. It appears however that on 8th April 1929, an objection was raised by

judgment-debtor 2 that

as it has not been mentioned in the application for execution that the decree-holder claimed the interest during the pendency of this execution case, he is not entitled to realise interest after the date of the application in the present execution, that the interest up to the date fixed for sale could not be allowed to be recovered in the present execution.

2. This objection raised by judgment-debtor 2 was disallowed. It appears further that on 28th August 1929, the decree-holder stated in a petition to the Court, in which the application for execution was pending, that a sum of Rs. 4,689-1-6, out of the claim in accordance with the decree, was due from the judgment-debtors in this execution case up to the next date fixed for auction sale, that is 4th September 1929; an account was filed along with petition; the decree-holder prayed that the amount of Rs. 4,689-1-6, might be allowed to be realized from the mortgage properties of the judgment-debtors in the execution proceedings that were pending before the Court at the time, by sale of the mortgage properties. It was found that there was a slight mistake as to the amount mentioned in the application made by the decree-holder; the correct figure being Rs. 4,698-13-0. To this petition filed by the decree-holder on 28th August 1929, there was an objection on behalf of judgment debtors 1 and 3. Presumably the other judgment-debtor 2" was not a party to this objection as his own objection, so far as the question of principle was concerned, had been disposed of by the Court on 8th April 1929.

3. The learned Judge in the Court below dealt with the objections raised by judgment-debtors 1 and 3; the order made by the learned Judge on 2nd September 1929, rejecting the objection of these judgment-debtors is the subject-matter of the present appeal. It has been argued before us in support of the appeal that the Court below ought to have held that the decree-holder having mentioned in his application for execution filed on 17th February 1925, that Rs. 47,308-8-5, was the amount due from the judgment-debtors, he was not entitled to realize a greater sum on account of future interest, and that the Court had no power to proceed with the execution in respect of the amount in addition to the amount stated in the application for execution. It was urged that the decree-holder not having claimed further interest, and no application for amendment of the execution petition having been made by the decree-holder, the Court had no power to allow any such future interest in the proceedings in execution pending before the Court, and to direct the sale of the mortgage properties in satisfaction of any amount in addition to the amount stated in the application for execution of the decree. On a careful consideration it appears to us that the decision arrived at by the learned Subordinate Judge on the question raised before him is correct.

4. We agree with the learned Judge in holding that it was not possible for the decree-holder on the date of application for execution to calculate the dues up to the date to be fixed for sale; as the Judge has pointed out in every execution case interest is calculated by the Court up to the date fixed for sale, and the

amount is inserted in the sale proclamation, and that if the sale is adjourned, further interest up to the date fixed again is also realized at the time of the sale. The learned Judge has rightly observed that if the Court could not do this, there could be no adjournment of the sale held in execution of the decree. The view taken by the learned Subordinate Judge in the Court below, is in our opinion, amply supported by the provisions contained in the Code of Civil Procedure. Order 21, Rule 2, Sub-rule (2), Clause (g), makes mention of the amount with interest, if any, due upon a decree as one of the particulars to be stated in an application for execution of a decree. This provision of the law was complied with by the decree-holder so far as the application for execution was concerned. The amount of interest due upon the decree at the time when the application was made was stated. At a (subsequent stage when the sale proclamation had to be settled the particulars to be stated in the proclamation of sale are those mentioned in O.21,R. 68, Civil P.C., Sub-rule (2)3. 66 is to this effect. Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor, and shall state the time and place of sale, and specify as fairly and accurately as possible (d) the amount for the recovery of which the sale is ordered. There can be no doubt that when the amount for the recovery of which the sale is ordered has to be stated in the sale proclamation, an account has to be taken of the amount due to the decree-holder by virtue of the decree sought to be executed, with interest due up to the date of sale. The properties are ordered to be sold in execution of the decree, and the amount to be realized by the sale is the amount which is due under the decree; there is no dispute that in the case before us the decree had directed payment of interest on the principal sum decreed in favour of the decree-holder .

5. In the above view of the case we are clearly of opinion that the order passed by the learned Subordinate Judge in the Court below refusing the objection of judgment-debtors 1 and 3, the appellants in this Court is right. In the result, the appeal is dismissed. The decree-holder respondent, is entitled to his costs in this Court, hearing-fee being assessed at five gold mohurs.

6. Let the record be sent down as soon as possible.

M.C. Ghose, J.

7. I agree.